

**THE ENVIRONMENTAL LAW AND POLICY CENTER’S COMMENTS ON THE
ILLINOIS COMMERCE COMMISSION’S LEGAL AUTHORITY
TO ADOPT THE RENEWABLE ENERGY DEVELOPMENT PROGRAM
OF GOVERNOR BLAGOJEVICH’S SUSTAINABLE ENERGY PLAN**

The Illinois Commerce Commission has asked all interested parties to submit comments on the Commission’s legal authority to adopt the renewable energy development components of the Sustainable Energy Plan, which the Governor has submitted to the Commission. The Environmental Law & Policy Center appreciates the opportunity to submit these comments for consideration.

The Illinois General Assembly has enacted the following statutory provisions:

Renewable forms of energy should be promoted as an important element of the energy and environmental policies of the State and it is a goal of the State that at least 5% of the State's energy production and use be derived from renewable forms of energy by 2010 and at least 15% from renewable forms of energy by 2020.

20 ILCS 688/5; 415 ILCS 5/9.10 (8).

The General Assembly finds and declares that the benefits of electricity from renewable energy resources and clean coal technologies accrue to the public at large, thus consumers and electric utilities and alternative retail electric suppliers share an interest in developing and using a significant level of these environmentally preferable resources in the State's electricity supply portfolio.”

20 ILCS 687/6-2.

The Governor’s Sustainable Energy Plan implements these statutory provisions and puts them into practice.

The Illinois Commerce Commission has supervisory authority over public utilities, 220 ILCS 5/4-101, is authorized to approve energy contracts and establish conditions, 220 ILCS 5/8-504, and is responsible for implementing all laws of the State within its jurisdiction. “The

Commission is authorized to make rules and regulations concerning the conditions to be contained in and become a part of contracts for public utility services, and any and all services concerning the same, or connected therewith.” 220 ILCS 5/8-504. Illinois law is replete with statutory authority specifically promoting the increased provision and use of renewable energy resources and energy efficiency resources:

- It is the policy of the State of Illinois that “environmentally safe” power be provided to consumers, and the goals and objectives of regulation by the Commission include ensuring “environmental quality”. 220 ILCS 5/1-102 (b).
- The Illinois Commerce Commission should act to promote the development of an effectively competitive electricity market that operates efficiently and is equitable to all consumers. Consumer protections must be in place to ensure that all customers continue to receive safe, reliable, affordable, and environmentally safe electric service. . . The use of renewable resources and energy efficiency resources should be encouraged in competitive markets.” 220 ILCS 5/16-101A (d) & (e) (emphasis added).
- “The General Assembly finds and declares that it is desirable to obtain the environmental quality, public health, and fuel diversity benefits of developing new renewable energy resources and clean coal technologies for use in Illinois and to lower the cost of renewable energy resources and clean coal resources provided to utility consumers. The General Assembly finds and declares that the benefits of electricity from renewable energy resources and clean coal technologies accrue to the public at large, thus consumers and electric utilities and alternative retail electric suppliers share an interest in developing and using a significant level of these environmentally preferable resources in the State's electricity supply portfolio. The General Assembly finds and declares that encouraging energy efficiency will improve the environmental quality and public health in the State of Illinois. 20 ILCS 687/6-2 (emphasis added).
- It is declared to be the policy of the State of Illinois: (1) To become energy self-reliant to the greatest extent possible, primarily by the utilization of the energy resources available within the borders of this State, and by the increased conservation of energy; and (2) To emphasize an approach to energy problems and solutions on a local or regional basis, and to emphasize the use of renewable energy sources wherever possible and practical to do so. 20 ILCS 1120/2 (b) (1) & (2).
- The General Assembly finds: . . . (c) that it is the responsibility of the State government to encourage the use of alternative renewable energy sources. 30 ILCS 725/1.1 (c).

- The state must become energy self-reliant and use renewable energy resources whenever possible. 20 ILCS 1120/2(b).
- The state has considerable natural resources that are available to produce electric power at an affordable price. 20 ILCS 688/5(b).
- Renewable energy should constitute at least 5% of the state's energy production and use by 2010 and at least 15% by 2020 (20 ILCS 688/5(f); 415 ILCS 5/9.10(a)(8)).

These statutory provisions make clear the Commission's statutory authority and, indeed, obligation to develop rules and regulations to promote renewable energy resources, including a renewable energy portfolio standard, and the Commission's statutory authority to implement the Governor's sustainable energy plan. The Commission's authority applies to both public utilities and to alternative retail electric suppliers: "[C]onsumers and electric utilities and alternative retail electric suppliers share an interest in developing and using a significant level of these environmentally preferable resources in the State's electricity supply portfolio." 20 ILCS 687/6-2. That is because "the benefits of electricity from renewable energy resources and clean coal technologies accrue to the public at large." *Id.* Likewise, both public utilities and alternative retail electric suppliers are covered because the general Assembly has legislated that the "goal of the State that at least 5% of the State's energy production and use be derived from renewable forms of energy by 2010 and at least 15% from renewable forms of energy by 2020" .20 ILCS 688/5; 415 ILCS 5/9.10 (8).

The more fundamental issue is not whether the Commission has statutory authority to act in approving the Governor's sustainable energy plan – which it clearly does – but, rather, whether the Commission has failed to follow the General Assembly's statutory directives to promote "environmentally safe" renewable energy by not acting on its own to this date.

It is worth noting that the New York Public Service Commission ("PSC") promulgated a renewable energy portfolio standard in September 2004 to fulfill state energy policy objectives to increase the use of renewable energy in the state. The New York PSC issued the renewable energy portfolio standard under its general authority to preserve environmental values, conserve natural resources, and encourage and support "green" marketing efforts.¹

For the foregoing reasons, the Illinois Commerce Commission has clear statutory authority and, indeed, an obligation under the Illinois General Assembly's declarations, to adopt rules and regulations and to take other regulatory actions to promote renewable energy development in Illinois as a significant share of the energy supply portfolio. Likewise, the Illinois Commerce Commission has clear statutory authority to adopt rules and regulations and to take other regulatory actions to implementing the renewable energy resources and energy efficiency resources provisions of the Governor's proposed Sustainable Energy Plan for Illinois. The Environmental Law and Policy Center appreciates the Commission's consideration of these comments, and we would be pleased to address any questions that the Commissioners and the Commission Staff may have on this matter.

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Respectfully submitted,



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¹ See New York Public Service Commission, Order Regarding Retail Renewable Portfolio Standard (Docket No. 03-E-0188), at p. 5 (Sept. 24, 2004).